

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MERLENE BACCHUS,

Plaintiff,

vs.

12-CV-1663 (PKC)(MDG)

NEW YORK CITY DEPARTMENT OF
EDUCATION; DISTRICT COUNCIL 37,
AFSCME, AFL-CIO; BOARD OF
EDUCATION EMPLOYEES LOCAL 372;
and RENEE PEPPER,

Defendants.
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STIPULATION OF DISCONTINUANCE AND ORDER OF DISMISSAL

WHEREAS, Plaintiff Merlene Bacchus ("Plaintiff") commenced the above captioned action (the "Action") on or about April 4, 2012, against Defendants District Council 37, AFSCME, AFL-CIO ("DC 37") and Board of Education Employees Local 372 ("Local 372") (collectively the "Unions") as well as other named Defendants;

WHEREAS, Plaintiff asserted in the Action, a breach duty of fair representation claim (the "Claim") against the Unions;

WHEREAS, the Claim is currently pending in the Action;

WHEREAS, Plaintiff and the Unions desire that the Action be discontinued as against the Unions on the terms and conditions set forth in this Stipulation so that

Plaintiff may bring an improper practice charge before the New York State Public Employment Relations Board ("PERB") against the Unions based upon the facts of the Claim;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Plaintiff and the Unions and/or their respective counsel as follows:

1. Subject to the terms and conditions set forth in paragraphs 2 through 6 of this Stipulation, Plaintiff and the Unions agree that the Claim hereby is discontinued and dismissed with prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

2. Notwithstanding that the Claim is dismissed with prejudice, Plaintiff and the Unions agree that Plaintiff may bring an improper practice charge against the Unions before PERB and assert the Claim against the Unions in such charge. The Unions further agree that the dismissal of the Claim with prejudice in this Action shall not be a bar or impediment to Plaintiff asserting the Claim in an improper practice charge before PERB.

3. Plaintiff and the Unions further agree, that the Unions shall not challenge nor oppose PERB's jurisdiction to hear and decide any improper practice charge based on the Claim that Plaintiff may bring before PERB against the Unions.

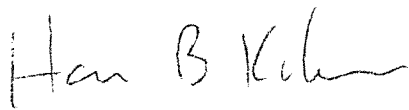
4. Plaintiff and the Unions further agree, that the Unions hereby waive any and all defenses based on jurisdiction, time bar, laches, or statute of limitations with respect to any improper practice charge based on the Claim that Plaintiff may bring against the Unions before PERB. If the Unions assert any such defenses, this Stipulation will be a dispositive basis to dismiss, deny, and give no effect whatsoever to such defenses.

5. Plaintiff and the Unions further agree that neither the dismissal with prejudice of the Claim nor the provisions of Section 204.1(a)(1) of PERB's Rules of Procedure (which require that improper practice charges be filed within four months of the alleged improper practice) shall in any way hamper, impede, or bar Plaintiff from asserting the Claim in an improper practice charge before PERB.

6. It is further agreed by Plaintiff and the Unions that neither the dismissal with prejudice nor the provisions of Section 204.1(a)(1) of PERB's Rules of Procedure shall in any way limit Plaintiff's ability to obtain relief from PERB and that the Unions shall not cite to nor rely on this dismissal with prejudice or the provisions of Section 204.1(a)(1) of PERB's Rules of Procedure, in any proceeding before PERB.

7. Plaintiff and the Unions further agree that, other than the specific defenses identified in paragraphs 3 and 4 of this Stipulation, the Unions may assert any defense to an improper practice charge before PERB in which Plaintiff asserts the Claim against one or both of the Unions.

Dated: July 19, 2016
New York, New York



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So Ordered

PAMELA K. CHEN, U.S.D.J.